

FILED

MAR 11 2013

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

HELENA DIVISION

SHAWN KAESTNER,)	CV 12-78-H-DLC-RKS
)	
Petitioner,)	
)	
vs.)	ORDER
)	
WARDEN LEROY KIRKEGARD,)	
)	
Respondent.)	
_____)	

United States Magistrate Judge Keith Strong entered Findings and Recommendation on February 4, 2013, and recommended dismissing the Amended Petition (doc. 7) as moot. Plaintiff did not timely object to the Findings and Recommendation, and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656

F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

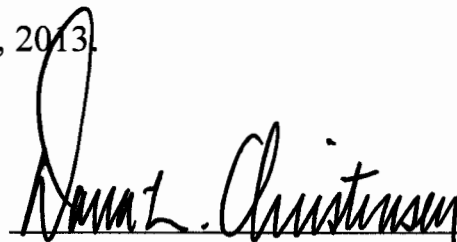
Kaestner seeks monetary damages for each day he is held, as a state prisoner, beyond his correct discharge date. Judge Strong found that not only are money damages not available in a habeas action, Kaestner is now discharged from his sentence and any injury he may have suffered can no longer be redressed by a favorable judicial decision. After a review of Judge Strong’s Findings and Recommendation, I find no clear error. Accordingly,

IT IS HEREBY ORDERED that Judge Strong’s Findings and Recommendation (doc. 8) are adopted in full. Kaestner’s Amended Petition (doc. 7) is DISMISSED AS MOOT.

The Clerk of Court is directed to enter judgment of dismissal by separate document.

IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

DATED this 11th day of March, 2013.

A handwritten signature in black ink, appearing to read "Dana L. Christensen", is written over a horizontal line.

Dana L. Christensen, District Judge
United States District Court